

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NIKITA WOODS-BIRD,

Plaintiff,

vs.

DALE M. NELSON,

Defendant.

CV-15-73-GF-BMM

ORDER

Plaintiff Nikita Woods-Bird (Woods-Bird) filed a proposed Complaint and a Motion to Proceed in Forma Pauperis on August 28, 2015. Woods-Bird is proceeding *pro se*. The Complaint alleges, *inter alia*, that Defendant Dale M. Nelson (Nelson) threatened to evict her, refused to allow her family to visit her apartment, and refused to let her keep therapeutic cats and dogs in her apartment, in contravention of 42 U.S.C. § 1983.

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on October 5, 2015. (Doc. 4). Judge Johnston recommended that the Complaint be dismissed because it “is based on an indisputably meritless legal theory.” (Doc. 9 at 3). Woods-Bird did not file objections to Judge Johnston’s Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege: 1) that a right secured by the Constitution or laws of the United States was violated, and 2) that the violation was committed by a person or entity acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Woods-Bird has failed to allege that Nelson was acting under color of state law.

Accordingly, IT IS ORDERED:

1. Plaintiff's Complaint (Doc. 2) is DISMISSED with prejudice.
2. Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Doc. 1) is DENIED as moot.
3. The Clerk is directed to enter judgment accordingly.

DATED this 27th day of October, 2015.



Brian Morris
United States District Court Judge